

### **AGENCY MEMBERS PRESENT**

Gene Caldwell, M.D., Chairman  
Carl Koella, III, Vice Chair  
Bryan Atchley  
E. Conrad Shackelford., designee for the TennCare Director  
Kristin Coile, designee for the Commissioner of Commerce and Insurance  
Faye Weaver, designee for the Comptroller of the Treasury  
Greg Lammert  
Charles Handorf, M.D.

### **AGENCY MEMBERS ABSENT**

Peggy Troy

### **AGENCY STAFF PRESENT**

Melanie Hill, Executive Director  
Mark Farber, Assistant Executive Director  
Reid Brogden, General Counsel  
Jim Christoffersen, Deputy General Counsel  
Rhonda Blair, Office Manager  
Melissa Bobbitt, Administrative Services Assistant

### **GUESTS PRESENT**

Baker, E. Graham, Esq., Weeks, Anderson, & Baker  
Baker, Glenn, Administrator/CEO, Baptist Memorial Hospital-Collierville  
Boswell, Bill, M.D.  
Brand, Bryan, Associate Hospital Director, Vanderbilt Medical Center  
Chill, Martha, Sr. VP/Administrator, Baptist Hospital for Women  
Cutshall, Ken, M.D.  
DeBoer, David, M.D.  
Duncan, Bruce, NHC  
Elrod, Dan H. Esq., Miller & Martin  
Gooch, Warren L., Esq., Kramer, Rayson, Leake, Rodgers & Morgan  
Hanson, Jennifer, V.P. Patient Care, Baptist Hospital of East Tennessee  
Hill, Ronald W., V.P., Strategic Development, Vanderbilt Medical center  
Holebrook Scott, Clinical Pharmacy Services  
Honeycutt, Juanita, Administrator, Sunbridge Care & Rehab for LaFollette  
Jenkins, Carol, President, Priority Hospice Care  
Jones, Jan, CEO, Alive Hospice  
Lackey, Lebron, M.D.  
Lawson, Justin, Adm. Southern Sports Medicine & Orthopedics Center  
Lee, Andre', Priority Hospice  
Lemons, Brent, Adm. Director of Emergency Services, VUMC  
Lodge, Richard, Esq., Bass, Berry & Sims  
Looney, Kim H., Esq., Waller, Lansden, Dortch & Davis  
Maples, Arthur, Director, Strategic Analysis, Baptist Memorial Hospital  
Moore, David, R., M.D.  
Perkins, Aaron  
Puri, Chris, THCA  
Sandler, Martin, Chairman Radiology, Vanderbilt Medical Center  
Suggs, Tony L., R.N.  
Sylvia, John B.  
Taylor, Jerry W. Esq., Farris Mathews, Branran, Bobango, Hellen, & Dunlap

Taylor, Lorine  
Taylor, Steve, Department of Health  
Trauger, Byron, Esq., Trauger, Ney & Tuke  
Wellborn, John L., Development Support Group  
West, William H., Esq., Baker, Donelson, Bearman, Caldwell & Berkowitz

**Chairman Caldwell called the meeting to order at 8:35 a.m. in the Main Auditorium of the Bell South Tower, Nashville, Tennessee.**

### **DIRECTOR'S ANNOUNCEMENTS**

Melanie Hill, Executive Director, made general announcements, which included a reminder that the February, 2005 meeting will be held at the Holiday Inn Select-Vanderbilt.

### **RULES DISCUSSION:**

Reid Brogden, General Counsel, provided an update on the proposed Rules. The Rulemaking hearing went well. Objections to the Rules generally fall into two categories: 1) the proposed Outpatient Diagnostic Center (ODC) Rule and 2) ongoing concerns from the Department of Health concerning the Rule which governs their review of CON applications. Agency staff have met with all interested parties regarding the proposed ODC rule and have concluded that it will not be workable as drafted. Several problems have been identified with the ODC rule. The most significant of which is that we are not going to be able to resolve those problems in this Rulemaking process. Concerning the ODC Rule, Agency staff are recommended that the Agency retain the Health Facilities Commission definition of ODC and wait to see if there is any legislative action to define ODC. Concerning the ongoing concerns from the Department of Health, staff does not object to the changes proposed by the Department of Health

Dr. Handorf moved for approval of the Rules, including the recommended changes detailed in Mr. Brogden's Memorandum. Mr. Atchley seconded the motion. The motion CARRIED [7-0-0]  
**APPROVED**

Aye: Shackleford, Coile, Lammert, Handorf, Weaver, Atchley, Caldwell  
NAY: None  
Mr. Koella was not present for the vote.

Mr. Brogden noted the Rules would now go to the Attorney General's Office for review. Upon a successful review by the Attorney General's Office, the Rules will then be filed with the Secretary of State. The Rules will have to remain on file for 75 days and we will have to appear before the Government Operations Committee for their review. It is expected that the timetable will be summer to late summer before we have an effective date for the new Rules.

### **CERTIFICATE OF NEED APPLICATIONS**

Mark Farber, Assistant Executive Director, summarized the following CON applications:

#### **Mahogany Hospice Care, Inc., (Nashville, Davidson County) Tennessee -- CN0408-073**

The establishment of a hospice agency. Care will be provided for individuals diagnosed with heart disease, AIDS, cancer, stroke, diabetes and hypertension which affect African Americans and the disadvantaged poor disproportionately. The goal of Mahogany Hospice Care, Inc. is to provide community-based healthcare services to underserved African Americans, disadvantaged poor and those that utilize TennCare as primary insurance. The hospice will serve Cheatham, Davidson, Dickson, Robertson, Rutherford, Sumner, Williamson and Wilson counties. \$58,208.56

Tony Suggs, R.N., addressed the Agency on behalf of the project. Lorine Taylor, spoke in support of the project.

Graham Baker, Esq., representing Priority Hospice Care, addressed the Agency in opposition to the project. Andre Lee, Priority Hospice, spoke in opposition to the project. Carol Jenkins was present in opposition to the project.

Richard Lodge, Esq., representing Alive Hospice, addressed the Agency in opposition to the project. Jan Jones, Executive Director, Alive Hospice, spoke in opposition to the project.

Mr. Suggs rebutted.

E. Graham Baker waived the summary for the Opposition.

Mr. Suggs provided summation for the Applicant.

Mr. Koella moved for approval of the project based on 1) Need -- This is an underserved group; 2) Economic Feasibility -- It is economically feasible and there are additional cash reserves available beyond what Mahogany Hospice Care, Inc. put on the application; and 3) Orderly development -- It is orderly. This gentleman has operated the business before and knows what is needed. Mr. Atchley seconded the motion. The motion CARRIED [4-3-0]. **APPROVED**

AYE: Coile, Koella, Atchley, Caldwell  
NAY: Shackelford, Handorf, Weaver  
RECUSED: Lammert

**East Tennessee Ambulatory Surgery Center LLC** (Johnson City, Washington County) Tennessee **CN0408-082**

The relocation of the ambulatory surgical treatment center (ASTC) from the current site at 302 Wesley Street, Suite 8, Johnson City to 701 Med-Tech Parkway, Johnson City (Washington County), Tennessee. \$1,640,683.00

William West, Esq., addressed the agency on behalf of the project. Ken Cutshall, M.D., spoke in support of the project. Dan Elrod, Esq., representing Mountain States Health Alliance, spoke in support of the project. Aaron Perkins and Bill Boswell were present in support of the project.

Mr. Koella moved for approval of the relocation project based on 1) Need – The need is there. They currently have inadequate workspace and they do a lot of good charity work; 2) Economic Feasibility – It is economically feasible with commercial loan; and 3) Orderly development – It is orderly. They are a TennCare provider and are properly licensed. Dr. Handorf seconded the motion. The motion CARRIED [8-0-0] **APPROVED**

AYE: Shackelford, Coile, Lammert, Koella, Handorf, Weaver, Atchley, Caldwell  
NAY: None

**Sunbridge Care & Rehab for LaFollette** (LaFollette, Campbell County) Tennessee -- **CN0409-084**

The conversion of four (4) existing home for the aged beds to long-term care dually certified nursing home beds for a total of one hundred eighty-two (182) beds. Home for the aged beds will be delicensed. \$3,000.00

Juanita Honeycutt, Administrator, addressed the agency on behalf of the project.

Dr. Handorf moved for approval of the project based on 1) Need -- The need has been established by the application documentation; 2) Economic Feasibility -- The financial feasibility is established in that there is no direct cost to this project; and 3) Orderly development -- The orderly development is served. Mr. Atchley seconded the motion. The motion CARRIED [8-0-0]. **APPROVED**

AYE: Shackelford, Coile, Lammert, Koella, Handorf, Weaver, Atchley, Caldwell  
NAY: None

**Vanderbilt University Hospital** (Nashville, Davidson County) Tennessee -- **CN0410-091**

The acquisition of a multi-slice computerized tomography (CT) scanner to be located within previously approved Emergency Department space to equip the Emergency Department and Trauma Center with the state-of-the-art technology and to provide additional capacity to handle the approved expansion of the Emergency Department. \$2,098,852.00

Ron Hill, Vice President, Strategic Development, addressed the Agency on behalf of the project. Dr. Martin Sandler, Bryan Brand, Associate Hospital Director, VUMC, and Brent Lemonds, Administrative Director Emergency Services, VUMC, were present in support of the project.

Mr. Koella moved for approval of the project based on: 1) Need -- There is a need given the current extremely high utilization of the machines in place; and being the only Level 1 trauma center in the region, they clearly need additional capacity; 2) Economic Feasibility -- It is economically feasible with the commercial loan; and 3) Orderly development -- It is orderly. They are a big TennCare provider and the license is proper. Dr. Shackleford seconded the motion. The motion CARRIED [8-0-0]. **APPROVED**

AYE: Shackleford, Coile, Lammert, Koella, Handorf, Weaver, Atchley, Caldwell  
NAY: None

**Oneida Imaging Center** (Oneida, Scott County) Tennessee -- **CN0410-092**

The establishment of an outpatient diagnostic center (ODC), acquisition of magnetic resonance imaging (MRI) equipment and the initiation of MRI services at 19230 Alberta Avenue, Highway 27, Oneida, Tennessee 37841. \$2,150,548.00

William West, Esq., representing the Applicant, addressed the Agency on behalf of the project.

Ms. Weaver moved for approval of the project based on 1) Need -- The need has been demonstrated since the agency has been in operation for several years. This is a failure to have received approval in the orderly process so it is after-the-fact; 2) Economic Feasibility -- It has been proven to be economically feasible; and 3) Orderly development -- It does contribute to the orderly development of healthcare since there are no other providers of this service in an area which is very difficult to get to geographically. Dr. Shackleford seconded the motion. The motion CARRIED [8-0-0]. **APPROVED**

AYE: Shackleford, Coile, Lammert, Koella, Handorf, Weaver, Atchley, Caldwell  
NAY: None

**Baptist Hospital of East Tennessee** (Knoxville, Knox County) Tennessee -- **CN0410-095**

The discontinuance of obstetrical services. There will be no change in the licensed bed count (329) of the hospital. No major medical equipment will be involved and no other health services are being proposed. \$13,000.00

Warren Gooch, Esq., representing the Applicant, addressed the agency on behalf of the project. Martha Chill, Sr. Vice President/Administrator, Baptist Hospital for Women; John Sylvia, Director, Baptist Health System of East Tennessee; and Jennifer Hanson, Vice President Patient Care, Baptist Hospital of East Tennessee, were present in support of the project.

Dr. Shackleford moved for approval of the project based on: The need, economic feasibility and orderly development all roll in together because they average less than one baby a day and five of the six obstetricians have withdrawn their delivery privileges there. When you consider that within Knox County there are at least five hospitals that are sixteen (16) and less miles from that facility as well nineteen (19) minutes and less travel time, there is certainly adequate accessibility. 1) Need -- They meet the need; 2) Economic Feasibility -- The project cost is very small and they have cash reserves; and 3) Orderly Development -- It does contribute to the orderly development of these services. Ms. Coile seconded the motion. The motion CARRIED [8-0-0]. **APPROVED**

AYE: Shackleford, Coile, Lammert, Koella, Handorf, Weaver, Atchley, Caldwell  
NAY: None

**Patient Partners Surgery Center** (Gallatin, Sumner County) Tennessee -- **CN0410-096**

DEFERRED TO THE FEBRUARY, 2005 MEETING

**Southern Sports Medicine** (Nashville, Davidson County) Tennessee -- **CN0410-097**

The acquisition of an extremities magnetic resonance imaging (MRI) unit and the initiation of MRI services limited to the patients of this physician practice, at its office in Suite 200, Plaza II, 2021 Church Street, Nashville, TN 37203. No facility license will be required for the MRI service.

\$979,476.00

John Wellborn, Consultant, representing the Applicant, addressed the Agency on behalf of the project. Dr. David DeBoer and Justin Lawson, Administrator, spoke in support of the project. Dr. David R. Moore was present in support of the project.

Dr. Shackelford moved for approval of the project based on 1) Need -- Their practice size is six (6) going to eight (8) and is mostly a sports injury practice requiring fairly rapid diagnosis and management of these injuries; and recognizing that Baptist Hospital does agree with the application considering the waits that their patients undergo. Referrals outside are anywhere from 15 to 20 percent delaying their completion of decision on how to manage their patients anywhere from 1 to 5 days. For these reasons I feel like they do meet the need; 2) Economic Feasibility -- It is economically feasible. They do have the cash reserves and the lease; and 3) Orderly Development -- It does contribute to the orderly development of healthcare. Second was given by Dr. Handorf. The motion CARRIED [8-0-0]. **APPROVED**

AYE: Shackelford, Coile, Lammert, Koella, Handorf, Weaver, Atchley, Caldwell

NAY: None

**Baptist Memorial Hospital-Collierville** (Collierville, Shelby County) Tennessee -- **CN0410-098**

The discontinuance of obstetrical (OB) services. There will be no change in the licensed bed count of sixty-one (61) beds. The six (6) OB beds will be converted to medical/surgical beds. No major medical equipment or new services are involved.

\$35,000.00

Dan Elrod, Esq., representing the Applicant, addressed the Agency on behalf of the project. Glenn Baker, Administrator/CEO, spoke on behalf of the project. Arthur Maples, Director of Strategic Analysis, was present in support of the project.

Mr. Lammert moved for approval of the project based on 1) Need -- The Applicant has demonstrated need. There are other providers for OB services in the area that can easily absorb the services. There have been declining births at this particular hospital since 2002; 2) Economic Feasibility -- The economic feasibility is apparent from the cash reserves; and 3) Orderly Development -- This will contribute to the orderly development of healthcare services in that area. Dr. Shackelford seconded the motion. The motion CARRIED [7-0-0]. **APPROVED**

AYE: Shackelford, Coile, Lammert, Koella, Weaver, Atchley, Caldwell

NAY: None

RECUSED: Handorf

**GENERAL COUNSEL'S REPORT**

**Bradley Regional Pet Imaging** (Cleveland, Bradley County) Tennessee -- **CN0306-041**

Request to modify certificate of need for mobile positron emission tomography (PET) from one (1) day per week to three (3) days per week. This application was granted at the September 2003 meeting for one day mobile PET services. The certificate of need was modified at the October 22, 2003 meeting to allow the applicant to substitute a PET/CT combination unit. The application was opposed and this office has asked the applicant to notify the opposition of this request

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John Wellborn, Consultant, representing the Applicant, addressed the Agency on behalf of the request. Dr. Lebron Lackey spoke in support of the request.

Mr. Koella moved for approval of the extension from one (1) to three (3) days per week for Bradley Regional Pet Imaging. Dr. Handorf seconded the motion. The motion CARRIED [8-0-0]  
**APPROVED**

AYE: Shackelford, Coile, Lammert, Koella, Handorf, Weaver, Atchley, Caldwell  
NAY: None

## **CURRENT REPORTS**

### **Statistical Reports**

The reports were accepted into the record.

### **Finance, Ways and Means Committee Reports**

The reports were accepted into the record.

### **Minutes**

Mr. Koella moved for approval of the minutes of the December 2004 meeting as written. Dr. Handorf seconded the motion. The minutes were accepted by unanimous voice vote [8-0-0]  
**APPROVED**

## **OTHER BUSINESS**

**A. December meeting date:** Dr. Handorf moved that the December 2005 meeting date be scheduled for December 14, 2005. Second was give my Mr. Atchley. Motion CARRIED by unanimous voice vote [8-0-0]

**B. Determination of whether a cyclotron meets the definition of major medical equipment:**

Scott Holebrook responded to questions from the Agency concerning cyclotrons.

The Agency concurred with Staff's determination that a certificate of need (CON) is not required for a cyclotron, regardless of cost.

## **ADJOURNMENT**

There being no further business, the meeting adjourned.

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Melanie M. Hill, Executive Director

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